

Hon. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SAFETY STAR, LLC., a Missouri limited
liability company,

Plaintiff,

vs.

APTIBYTE, LLC, a Washington limited liability
company,

Defendant.

Case No. 2:23-CV-01399

AMENDED COMPLAINT FOR
TRADEMARK NT, FALSE
INFRINGEMENT DESIGNATION OF
ORIGIN, AND CONTRIBUTORY
TRADEMARK INFRINGEMENT,
INFRINGEMENT

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Plaintiff Safety Star, LLC (“Plaintiff”), by and through its attorneys, files this Amended Complaint (“Amended Complaint”) against Defendant Aptibyte LLC, (“Defendant”), alleging as follows and states as provided herein.

AMENDED COMPLAINT

Case No. 2:23-CV-01399



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II. THE PARTIES

2. Plaintiff is a Missouri limited liability company that provides an array of safety awareness programs and products, including safety bingo kits and cards. Plaintiff has been in business for over 30 years, and has a principal place of business in Ozark, Missouri.

3. Defendant is a Washington limited liability company having a principal place of business at 10013 NE Hazel Dell Ave., # 212, Vancouver, WA 98685-5203, and a registered address at 605 NW 94th St., Vancouver, WA 98665.

4. On information and belief, Defendant occasionally does business under its company name.

5. On information and belief, Defendant is also does business under the fictitious name “Bingo Baker”.

III. JURISDICTION AND VENUE

6. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, in that this action arises under Acts of Congress relating to trademarks, and the claims for unfair competition under state law are joined with substantial and related claims brought under the federal trademark laws.

7. This court likewise has diversity jurisdiction under 28 U.S.C. § 1332 in that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different states in that Plaintiff has its principal place of business in the state of Missouri, and Defendant has its principal place of business in the state of Washington.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) in that a substantial part of the events giving rise to the claim occurred in this district and that Defendant is subject to the court’s subject matter and/or personal jurisdiction with respect to this action as indicated in the preceding paragraphs.

IV. FACTUAL BACKGROUND

9. Plaintiff was founded by Mr. Albert Culbertson in 1989, and since its founding, Plaintiff has sold a variety of safety awareness programs and products to consumers throughout the United States and across the world.

10. Plaintiff has manufactured, marketed, and sold a proprietary safety bingo program under the trademarks B-SAFE and BSAFE BINGO (the “B-SAFE Bingo Program”) since January 1992, long before Defendant’s acts described herein.

11. Since at least January 1992, Plaintiff has continuously manufactured, marketed, and sold the B-SAFE Bingo Program in commerce throughout the United States.

12. Plaintiff has invested significant time, effort, and expense in advertising, marketing, and promoting the B-SAFE Bingo Program, and has enjoyed significant consumer recognition and goodwill as a result.

13. Attached as Exhibit 1 is a true and correct copy of a game card from Plaintiff’s B-SAFE Bingo Program.

14. Plaintiff markets and offers for sale its B-SAFE Bingo Program directly to consumers, such as through its website at www.safetystar.com as shown in Exhibit 2.

15. Plaintiff’s continuous and exclusive use of its B-SAFE and BSAFE BINGO trademarks and the intellectual property associated therewith resulted in generating goodwill and consumer recognition in connection with the B-SAFE Bingo Program throughout the United States.

16. Consumers therefore recognize the B-SAFE Bingo Program as the original and authentic safety bingo product that they trust for their workplace safety training efforts.

PLAINTIFF’S TRADEMARKS

17. Plaintiff is the owner of the following U.S. Trademark Registrations for use in connection with its B-SAFE Bingo Program (collectively, the “B-SAFE Trademarks”):

Mark	Reg. No.	Goods/Services	Filing Date	Reg. Date
B-SAFE	3032329	Bingo-type game cards for use in promoting safety.	January 8, 2005	December 20, 2005
BSAFE BINGO	5660503	Board games designed to promote employee safety awareness.	June 4, 2018	January 22, 2019

18. True and correct copies of the foregoing registrations are attached as Exhibits 3 & 4.

19. Plaintiff's B-SAFE Trademarks are "prima facie evidence of the validity of the registered mark[s] and of the registration of the mark[s], of [Plaintiff's] ownership of the mark[s], and of the [Plaintiff's] exclusive right to use the registered mark[s] in commerce on or in connection with the goods or services specified in the certificate . . ." pursuant to 15 U.S.C. § 1057.

20. Plaintiff's U.S. Trademark Reg. No. 3032329 for B-SAFE was filed for before and registered before Defendant's infringing use commenced.

21. As a result of Plaintiff's extensive use of its B-SAFE Trademarks, the trademarks have become uniquely associated with Plaintiff.

22. The B-SAFE Trademarks are inherently distinctive, and Plaintiff's use of its B-SAFE Trademarks pre-dates Defendant's confusingly similar use on its bingo cards, as described herein.

DEFENDANT'S INFRINGING ACTIVITIES

23. Defendant is engaged in the creation and distribution of bingo cards bearing the B-SAFE Trademarks to consumers in this district.

24. Defendant is engaged in the business of operating an online bingo card system at its website www.bingobaker.com. Attached as Exhibit 5 is a screenshot of Defendant's website dated March 29, 2023.

25. Defendant's website is generally directed to all consumers, including those in this district.

26. Defendant offers bingo cards with the marks BSAFE, B SAFE, B-SAFE, and BSAFE BINGO, all of which are available to consumers to download and print at Defendant's website.

27. Defendant offers bingo cards with the marks BSAFE, B SAFE, B-SAFE, and BSAFE BINGO, all of which are available to consumers to utilize as digital bingo cards.

28. On information and belief, Defendant has offered bingo cards bearing the B-SAFE Trademarks since at least 2017. A true and correct copy of one of Defendant's bingo cards bearing the mark BSAFE is attached as Exhibit 6 which shows a "created" date of 2017-04-19, years after Plaintiff had established rights and goodwill in and to the B-SAFE Trademarks.

29. Defendant's bingo cards are identical or highly similar to the cards included in Plaintiff's B-SAFE Bingo Program.

30. Defendant further hosts these identical or highly similar bingo cards generated by customers on its server(s), whereby these bingo cards are searchable and accessible to Internet users. On information and belief, Defendant earns revenues from consumers who generate, download, print, or otherwise export bingo cards bearing the marks BSAFE, B SAFE, B-SAFE, and BSAFE BINGO.

31. As such, Defendant allows consumers to generate, distribute, and print bingo cards bearing the B-SAFE Trademarks, thereby circumventing Plaintiff's commercial goods.

32. On or about March 23, 2020, shortly after learning of Defendant's unauthorized use of the B-SAFE Trademarks for bingo cards, Plaintiff sent a cease and desist letter to Defendant. Attached as Exhibit 7 is a true and correct copy of the cease and desist letter. This letter effectively placed Defendant on notice that its use of BSAFE, B SAFE, B-SAFE, and BSAFE BINGO infringe the B-SAFE Trademarks.

33. On information and belief, Defendant to date has not ceased infringing use of the B-SAFE Trademarks and has expanded the number of bingo cards bearing the B-SAFE Trademarks, all of which directly overlap with Plaintiff's products and registered rights. Attached as Exhibits 8-10 are screenshots from Defendant's website showing numerous bingo cards bearing the BSAFE, B SAFE, B-SAFE, and BSAFE BINGO marks.

34. Thus, from at least March 23, 2020 to the present, Defendant continued to supply infringing products to bingo card makers with knowledge that the these individuals are mislabeling bingo cards with B-SAFE Trademarks for use in interstate commerce.

35. Defendant's infringing bingo cards appear on the first page of search results during a query for the phrase "BSAFE Bingo" on Google®. Attached as Exhibit 11 is a screenshot of this query conducted on March 29, 2023 – which is after Defendant was placed on actual notice of its infringing activities. Defendant therefore encourages, instructs, and otherwise induces consumers to make bingo cards bearing marks nearly identical to the B-SAFE Trademarks, knowing that the such use infringes the B-SAFE Trademarks.

36. Defendant's infringing bingo cards appear throughout the first page of image search results during a query for the phrase "BSAFE Bingo" on Google®. Attached as Exhibit 12 is a screenshot of the image search results for the query conducted on March 29, 2023. On information and belief, Defendant at various times has used the terms "BSAFE," "B SAFE," "B-SAFE," and/or "BSAFE BINGO" in its GoogleAds campaigns to rank higher on Google, knowing that such terms infringe upon the B-SAFE Trademarks.

37. Upon information and belief, Defendant has tagged the BSAFE-related bingo cards available on its website with the terms BSAFE and B-SAFE for search engine optimization purposes, which has resulted in these infringing bingo cards to appear prominently in the aforementioned search results. In other words, Defendant populated its site with multiple instances of the terms "BSAFE," "B SAFE," "B-SAFE," and/or "BSAFE BINGO," including

1 the deliberate retention of bingo cards showing such terms, to increase the chances its site would
2 rank higher in Google® search results.

3 38. Defendant provides a “Search Tips” section on its website at
4 www.bingobaker.com/tips. These “Search Tips” provide consumers with instructions on how
5 to perform advanced searching using a query language. Attached as Exhibit 13 is a screenshot
6 of Defendant’s website dated March 29, 2023.

7 39. Defendant’s “Search Tips” provide consumers instructions on how to
8 restrict or block certain terms from appearing in the results. For example, Defendant states that
9 the query “‘corpus: ‘milton friedman’ -economics” results in “bingo cards with a word or clue
10 containing the exact phrase ‘milton friedman’, but nothing in the BingoBaker mentions
11 ‘economics’.” *See id.* Upon information and belief, Defendant could have implemented a similar
12 software mechanism to prevent consumers from generating bingo cards that incorporate the B-
13 SAFE Trademarks upon receiving Plaintiff’s cease and desist letter.

14 40. Defendant offers and advertises a paid membership to its website which allows
15 customers to access bingo cards generated and hosted by Defendant, including B-SAFE related
16 bingo cards. Attached as Exhibit 14 is a screenshot of Defendant’s website dated July 17, 2023
17 that allows customers to sign up for a membership for \$24.95.

18 41. Defendant has offered a paid membership to its website since at least March 23,
19 2015. Attached as Exhibit 15 is an Archive.org screenshot of Defendant’s website dated March
20 23, 2015 that allows customers to sign up for a membership.

21 42. Defendant’s offering of bingo cards so similar to, and under identical marks, has
22 harmed Plaintiff.

23 43. Defendant is not in any way affiliated with Plaintiff, has used the B-
24 SAFE Trademarks without authorization, without Plaintiff’s consent, and has therefore interfered
25 with Plaintiff’s prospective economic advantage as a result of allowing potential consumers of
26 circumvent purchasing Plaintiff’s B SAFE Bingo Program, all while infringing Plaintiff’s rights.

44. Defendant's continued use of the B-SAFE Trademarks and branding efforts related to its bingo cards will confuse consumers. Defendant's continued efforts to trade off Plaintiff's goodwill will continue to cause Plaintiff harm. For example, Defendant's use of the B-SAFE Trademarks to populate its site to further its Google search ranking has harmed Plaintiff's ability to do the same. As another example, Defendant's offering of bingo cards bearing the B-SAFE Trademarks directly competes with Plaintiff's own offerings.

45. Defendant has the ability to remove any content on the bingobaker.com site. Defendant's Terms of Use, attached as Exhibit 16 and available at <https://bingobaker.com/legal>, states in pertinent part as follows:

Availability: We reserve the right to modify or discontinue, temporarily or permanently, the Site (or any part thereof) with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension or discontinuance of the Site.

[...]

Third Party Material: Under no circumstances will we be liable in any way for any content or materials of any third parties, including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that we do not pre-screen content, but that Aptibyte LLC and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Site. Without limiting the foregoing, Aptibyte LLC and its designees will have the right to remove any content that violates these Terms of Use or is deemed by Aptibyte LLC, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

46. Defendant thus exercises direct control and monitoring of the instrumentality used by a third party site visitor to print cards and infringe the plaintiff's mark.

FIRST CAUSE OF ACTION

(Federal Trademark Infringement [Lanham Act, 15 U.S.C. § 1114])

1 47. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 44,
2 inclusive, and incorporates them as though fully set forth by this reference herein.

3 48. Defendant's use in commerce of words, terms, or names, or any combination
4 thereof, consisting of or including the confusingly similar mark B-SAFE, and/or derivatives
5 thereof constitutes a colorable imitation of Plaintiff's B-SAFE Trademarks, and is likely to cause
6 confusion, or to cause mistake, or to deceive. As such, Defendant's use of the B-SAFE
7 Trademarks constitutes an infringement of Plaintiff's trademarks.

8 49. Defendant profits from its commercial use of the B-SAFE Trademarks by selling
9 memberships to its website where customers can obtain bingo cards bearing the B-SAFE
10 Trademarks.

11 50. Defendant's infringing actions are intentional and willful, as Defendant expanded
12 its use of the B-SAFE Trademarks with actual knowledge of Plaintiff's rights.

13 51. Defendant's acts of infringement have caused and are causing actual damage and
14 irreparable harm to Plaintiff, for which legal remedies are inadequate. Therefore, in addition to
15 monetary remedies, Plaintiff seeks injunctive relief to permanently bar Defendant from use of
16 B-SAFE Trademarks, and any confusingly similar marks in commerce in connection with their
17 products, services, or offerings.

18 52. Defendant's intentional actions are willful and render this an exceptional case,
19 further entitling Plaintiff to recovery of trebled damages, attorneys' fees and costs of suit as
20 detailed in 15 U.S.C. § 1117.

21 **SECOND CAUSE OF ACTION**

22 **(False Designation of Origin [Lanham Act, 15 U.S.C. § 1125(a)])**

23 53. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 50,
24 inclusive, and incorporates them as though fully set forth by this reference herein.

25 54. In addition to its federally registered trademarks, Plaintiff is the owner of common
26 law rights for B-SAFE Trademarks.

55. Defendant's use in commerce of words, terms, or names, or any combination thereof, consisting of or including the confusingly similar mark B-SAFE, and/or derivatives thereof constitutes a colorable imitation of Plaintiff's B-SAFE Trademarks, and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff.

56. Defendant's use of the B-SAFE Trademarks is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities by Plaintiff.

57. Defendant's use of the B-SAFE Trademarks in advertising and branding is a blatant attempt to capitalize on the goodwill established by Plaintiff.

58. Defendant's infringing actions are intentional and willful, as Defendant expanded its uses of the B-SAFE Trademarks with actual knowledge of Plaintiff's rights.

59. Defendant's acts of infringement have caused and are causing actual damage and irreparable harm to Plaintiff, for which legal remedies are inadequate. Therefore, in addition to monetary remedies, Plaintiff seeks injunctive relief to permanently bar Defendant from use of the B-SAFE Trademarks, and any confusingly similar marks in commerce in connection with their products, services, or offerings.

60. Defendant's intentional actions are willful and render this an exceptional case, further entitling Plaintiff to recovery of trebled damages and its attorneys' fees and costs of suit as detailed in 15 U.S.C. § 1117.

THIRD CAUSE OF ACTION

(Contributory Trademark Infringement)

61. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 58, inclusive, and incorporates them as though fully set forth by this reference herein.

62. Defendant has been and continues to be aware of – and has been and continues to contribute to – the infringement of the B-SAFE Trademarks by others by prominently displaying, promoting, and producing infringing bingo cards which are generated by, and hosted on, its website.

63. Defendant’s website is configured such that a search for the mark “BSAFE” or “B-SAFE” will lead directly to the infringing bingo cards which have been generated by, and which are hosted on, its website.

64. Defendant, through software operating on or via its website, generates and distributes the infringing bingo cards to consumers.

65. Alternatively, Defendant has remained willfully blind to the infringement of the B-SAFE Trademarks on its website and on the bingo cards it generates and distributes to consumers.

66. Plaintiff has been damaged by and Defendant has profited from Defendant’s contributory trademark infringement.

67. To remedy Defendant’s contributory trademark infringement, Plaintiff is entitled to all of the remedies set forth above for direct trademark infringement and false designation of origin under the Lanham Act.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court enter judgment against Defendant as follows:

- A. That the Court render a final judgment in favor of Plaintiff and against Defendant on all claims for relief alleged herein;
- B. That the Court render a final judgment that Defendant has willfully violated the provisions of 15 U.S.C. § 1114 by infringing Plaintiff’s federally registered trademarks;

- 1 C. That the Court render a final judgment that Defendant has violated the provisions of 15
2 U.S.C. § 1125(a) by willfully infringing the B-SAFE Trademarks by using a false
3 designation of origin, through the marketing, sale, and promotion of Defendant's products;
4 D. That the Court render a final judgment that Defendant has contributorily infringed
5 Plaintiff's federal registered trademarks;
6 E. For pre-judgment interest on all amounts claimed as permitted by law;
7 F. For an order of permanent injunction, enjoining Defendant from using the B-SAFE
8 Trademarks, or any confusingly similar trademarks, tradenames, or domain names that
9 include the B-SAFE Trademarks, or any confusingly similar mark or variation, in
10 connection with the generation, offering, distribution, advertising, or sale of bingo cards.
11 G. That Defendant be directed to file with this Court and serve on Plaintiff within thirty (30)
12 days after the service of the injunction, a report, in writing, under oath, setting forth in
13 detail the manner and form in which it has complied with the injunction pursuant to 15
14 U.S.C. § 1116;
15 H. For an order requiring Defendant to engage in corrective advertising to restore, to the fullest
16 extent possible, the value of Plaintiff's intellectual property;
17 I. That Defendant be required to deliver and destroy all devices, literature, advertising, goods,
18 and other unauthorized materials bearing the B-SAFE Trademarks, or any confusingly
19 similar marks, pursuant to 15 U.S.C. § 1118; and
20 J. That this case be deemed exceptional, and the amount of the damages be trebled and that
21 the amount of profits be increased by as many times as the Court deems appropriate,
22 pursuant to 15 U.S.C. § 1117; and
23 K. For such other, further, and different relief as the Court may deem proper under the
24 circumstances.

25
26 **JURY DEMAND**

27 AMENDED COMPLAINT

Case No. 2:23-CV-01399

1 Plaintiff requests a trial by jury of all claims that can be so tried.
2

3 DATED May 6, 2025.
4

5 By  _____

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AMENDED COMPLAINT

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